

LEGAL ISSUES REGARDING CONSENT INFANT TODDLER PROGRAM

The Infant Toddler Program (ITP) is often presented with issues regarding who is legally responsible to give consent for ITP screenings, assessments, evaluations, services, access to records, etc. The IDEA Part C Federal Regulations define a “parent” and who may act in that role, however, a variety of legal consent issues arise that are not addressed in the federal regulations. This document provides general guidance to a variety of situations that occur and how these situations must be handled from a legal standpoint.

While this document provides general guidance, remember that there may be unique situations that can be encountered. If additional information is needed, consult with a hub leader or local supervisor. *If an ITP staff or contractor feels pressure from a child’s parent or other relative, Department staff, etc., or is placed in a compromising or uncomfortable situation regarding consent, they should notify a local supervisor or hub leader immediately.*

The federal and state regulations addressed in this document are found in the IDEA Part C Federal Regulations, the Family Educational Rights and Privacy Act (FERPA), and the Idaho Administrative Code (IDAPA). An explanation of these federal and state regulations and where they can be accessed follows in the chart below.

Individuals with Disabilities Education Act (IDEA) Part C Regulations
The <i>Individuals with Disabilities Education Act (IDEA)</i> is a law ensuring services to children with disabilities throughout the nation. The IDEA governs how states and public agencies provide early intervention, special education and related services to eligible infants, toddlers, children and youth with disabilities. Infants and toddlers with disabilities (birth-3) and their families receive early intervention services under IDEA Part C. The IDEA Part C regulations are found at 34 CFR § 300: http://healthandwelfare.idaho.gov/Portals/0/Children/InfantToddlerProgram/FormsAndResources/IDEAPartCRegs.pdf
Family Educational Rights and Privacy Act (FERPA)
Also included are references to the <i>Family Educational Rights and Privacy Act (FERPA)</i> . The purpose of the FERPA regulations is to set out requirements for the protection of privacy and confidentiality provisions for parents and students. The FERPA is a federal law that affords parents the right to have access to their children’s education records, the right to seek to have records amended, and the right to have some control over the disclosure of personally identifiable information from the education records. The FERPA regulations are found at 34 CFR § 99: https://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html
Idaho Administrative Procedure Act (IDAPA)
The Idaho Administrative Code is a compilation of agency rules promulgated and adopted pursuant to the Idaho Administrative Procedure Act (IDAPA). The code, referred to as the IDAPA, is published each year upon the conclusion of the legislative session. To access Department of Health and Welfare rules go to: https://adminrules.idaho.gov/rules/current/16/index.html

FEDERAL AND STATE REGULATIONS: How They Apply to Legal Consent

FEDERAL REGULATIONS: CONSENT

IDEA Part C	FERPA
<p><u>IDEA Part C 34 CFR § 303.7 – Definition of Consent</u></p> <ul style="list-style-type: none"> • <i>The parent</i> has been fully informed of all information relevant to the activity for which consent is sought, in the parent’s native language. • <i>The parent</i> understands and agrees in writing to the carrying out of the activity for which the parent’s consent is sought, and the consent form describes that activity and lists the early intervention records (if any) that will be released and to whom they will be released to. • <i>The parent</i> understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time. If a <i>parent</i> revokes consent, that revocation is not retroactive (i.e., it does not apply to an action that occurred before the consent was revoked.) <p><u>IDEA Part C 34 CFR § 303.405(c) – Access Rights to Records</u></p> <ul style="list-style-type: none"> • An agency may presume that the parent has authority to inspect and review records in relation to his or her child unless the agency has been provided documentation that the parent does not have the authority under applicable state laws governing such matters as custody, foster care, guardianship, separation, and divorce. <p><u>IDEA Part C 34 CFR § 303.29 – Personally Identifiable Information</u></p> <ul style="list-style-type: none"> • "Personally Identifiable Information" means personally identifiable information as defined in 34 CFR 99.3. The term “student” refers to “child” and any reference to “school” means “EIS provider” as used in this part. • These requirements apply to children with disabilities birth to three years of age and, protect “Personally Identifiable Information” in early intervention records collected, maintained, or used under Part C of the IDEA. Under the IDEA, participating agencies must protect the personally identifiable information, data, or records that are collected, maintained, or used by the participating agency. 	<p><u>FERPA 34 CFR § 99.30 – Consent to Disclose Information</u></p> <ul style="list-style-type: none"> • A parent shall provide a signed and dated written consent before an educational agency or institution discloses personally identifiable information from the education records, except as provided in § 99.31. <p><u>FERPA 34 CFR § 99.4 – Access Rights to Records</u></p> <ul style="list-style-type: none"> • An educational agency or institution shall give full rights under the Act to either parent, unless the agency or institution has been provided with evidence that there is a court order, state statute, or legally binding document relating to such matters as divorce, separation, or custody that specifically revokes these rights. <p><u>FERPA 34 CFR § 99.3 – Personally Identifiable Information</u></p> <ul style="list-style-type: none"> • "Personally Identifiable Information" includes, but is not limited to— <ul style="list-style-type: none"> ▪ The student’s name; ▪ The name of the student’s parent or other family members; ▪ The address of the student or student’s family; ▪ A personal identifier, such as the student’s social security number, student number, or biometric record; ▪ Other indirect identifiers, such as the student’s date of birth, place of birth, and mother’s maiden name; ▪ Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or ▪ Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.

TOPIC: FERPA AND IDEA FEDERAL REGULATIONS

KEY POINTS

- ✓ The IDEA Part C incorporates some of the FERPA privacy and confidentiality requirements, but also includes several provisions that are specifically related to infants, toddlers and children with disabilities receiving services under IDEA, and provide protections beyond the FERPA requirements.
- ✓ The FERPA and IDEA Part C intersect in many areas. It is important that when programs have a question regarding privacy and confidentiality of a child with a disability, the privacy and confidentiality provisions of IDEA Part C are considered first, and then the FERPA rules and regulations are reviewed, as applicable.
- ✓ Consent must be obtained from the person identified as the child's parent based on the definition of parent and key points below.
 - *Note: See IDEA Part C and FERPA definition of "parent" in the section below.*
- ✓ The IDEA Part C regulations and state law requires consent from only one parent.
- ✓ If a parent designation change occurs, ITP does not need to obtain new signatures on consents already signed and moving forward the newly designated parent signs any new consent.
- ✓ *In certain circumstances, and if necessary, (i.e., child is in foster care and biological parent cannot know whereabouts of the child), it is imperative that documents go through the redaction process before releasing personal identifiable information. Check your region's redaction process. It is also very important to review any advisory information in ITPKIDS in the designated advisory tab.*

FEDERAL AND STATE REGULATIONS: How They Apply to the Definition of Parent

FEDERAL AND STATE REGULATIONS: DEFINITION OF PARENT

IDEA Part C 34 CFR § 303.27 – Definition of Parent

- A biological or adoptive parent of a child.
- A foster parent, unless state law, regulations, or contractual obligations with a state or local entity prohibit a foster parent from acting as a parent.
- A guardian generally authorized to act as the child’s parent, or authorized to make early intervention, educational, health or developmental decisions for the child (but not the State if the child is a ward of the State).
- An individual acting in the place of a biological or adoptive parent (including a grandparent, step-parent, or other relative) with whom the child lives, or an individual who is legally responsible for the child’s welfare.
- A surrogate parent who has been appointed by the Lead Agency.
 - *Note: The list of people who are outlined in the “definition of parent” in IDEA Part C is not intended to be used as a “hierarchy”.*

IDAPA 16.06.01.12(06.) – Definition of Parent

- A person who, by birth or through adoption, is considered legally responsible for a child. The term “legal guardian” is not included in the definition of parent.

FERPA 34 CFR § 99.3 – Definition of Parent

- A “parent” means a parent of a child and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian.

IDEA Part C 34 CFR § 303.422 – Assignment of a Surrogate Parent

- The Infant Toddler Program must ensure that the rights of a child are protected when:
 - No parent (as defined above in IDEA Part C) can be identified;
 - The Infant Toddler Program, after reasonable efforts, cannot locate a parent; or
 - The child is a ward of the State and a surrogate parent has been assigned per the Infant Toddler Program Surrogate Parent Policy.

TOPIC: PARENT

KEY POINTS

- ✓ If the biological or adoptive parent is available, IDEA Part C makes it very clear that the biological or adoptive parent makes all Part C decisions for their child.
- ✓ When more than one party is qualified to act as the child’s parent as defined in §303.27 DEFINITION OF PARENT, the biological or adoptive parent must be presumed to be the parent unless the biological or adoptive parent does not have legal authority to make educational or early intervention decisions for the child.
- ✓ If the biological parent’s whereabouts are known, and they are not interested in receiving ITP services for their child and no other person has a judicial decree or order identifying them to act as the “parent” of the child or to make educational or early intervention decisions on behalf of the child, ITP must respect the parent’s decision.
- ✓ The ITP early intervention services are voluntary.
- ✓ ITP cannot identify someone else to act as the child’s parent simply because they do not agree with decisions made by the biological or adoptive parent.
- ✓ If a judicial decree or order identifies a specific person or persons to act as the “parent” of a child or to make educational or early intervention decisions on behalf of the child, then that person or persons must be determined to be the “parent” for purposes of Part C of the Act. *Employees of the Infant Toddler Program, Child Welfare Program or any other public agency, or early intervention provider that delivers services to the child or the child’s family may **NOT** act in the place of a parent.*
- ✓ The IDEA Part C regulations and state law requires consent from only one parent. According to IDEA Part C regulations and Idaho statute, ITP only needs consent from *a person* meeting the definition of “parent”. If there is a conflict between parents regarding ITP services, ITP should encourage the parents to work together and find common ground regarding ITP services.
- ✓ In cases where parents have the same level of decision making authority (e.g., parents who are divorced or parents who are not married) both parents should be informed that they have the same parental rights unless there is some type of court document (divorce agreement or other court document) stating one has a higher level of decision making authority over the other to make decisions for their child. Sometimes these agreements even break it down to educational decisions. If both parents’ names are on the birth certificate, they are both legal parents regardless of the marital status. If there is no custody order in place granting one parent a higher level of decision making authority, then they are equal in authority.
- ✓ Idaho state law prohibits a foster parent from acting as a parent. However, a foster parent can be assigned as a surrogate parent, per the surrogate parent policy, when ITP is unable to locate the biological or adoptive parent.
 - *Note: A surrogate parent can also include a grandparent, step-parent, or other relative.*
- ✓ In cases where a parent is in jail or prison, and the biological or adoptive parent’s whereabouts are known, and their parental rights have not been terminated, ITP must obtain any required IDEA Part C signatures from the biological or adoptive parents.
- ✓ ITP must make reasonable efforts to locate and contact a parent who is in jail or prison. ITP can contact the child’s CFS worker, the Department of Corrections, or contact the last known jail to help identify where the parent is located. If ITP is not able to locate parent, refer to the Surrogate Parent Policy to assign a surrogate parent and ensure all attempts to contact parent are documented in a CSR.
- ✓ When ITP locates a parent, but the family is unresponsive to attempts to contact, follow the ITP closure policy.

- ✓ If a biological parent is available, then a step-parent cannot provide consent for the child even if the biological parent wants them to. In addition, ITP cannot legally share information with a step-parent without a signed release from the biological or adoptive parent.
- ✓ If a step-parent has legal guardianship of the child to act as the parent or to make educational or early intervention decisions on behalf of the child, then the step-parent can provide consent.
- ✓ A minor parent can consent to early intervention services on behalf of their own child as long as the minor parent has *sufficient comprehension to understand the need for, the nature of and the significant risks inherent in the treatment*. If the minor parent is involved with CFS, it is important to include the CFS worker in the decision whether the parent appears to be competent to consent.
- ✓ A parent who has a developmental or mental disability has legal authority to consent to treatment on behalf of their own child if they have *sufficient comprehension to understand the need for, the nature of and the significant risks inherent in the treatment*. Even though the parent has a developmental or mental disability, it doesn't necessarily mean that the parent is incompetent to give consent. Remember the test is whether a person has sufficient comprehension to understand the need for and risks inherent in the treatment. So, if the parent can understand that, then they can sign the consent for treatment. The exceptions include:
 - If the infant has a legal guardian, the legal guardian has decision making authority to give informed consent for the child over a biological or adoptive parent.
 - If the parent has a legal guardian because he or she has a developmental or mental disability, it is important to work with the guardian to help determine if the parent has the ability to give informed consent.

TOPIC: GRANDPARENT

KEY POINTS

- ✓ According to the IDEA Part C definition of “parent”, when more than one party is qualified to act as the child’s parent, the biological or adoptive parent must be presumed to be the parent unless the biological or adoptive parent does not have legal authority to make educational or early intervention decisions for the child. This is important to note in instances where any grandparents are involved and may want to make decisions for the child.
- ✓ If the biological parent’s whereabouts are known and the child resides with a grandparent due to a parent being in another location such as a hospital, jail or prison, another town or region, etc., the grandparent does not have legal authority to act as the child’s parent or make educational or early intervention decisions for their grandchild. We must adhere to the biological parent’s direction unless the grandparent has documentation to show legal guardianship of the child, or the parent delegates some or all their parental rights on a temporary basis to another party, such as a child’s grandparent.
- ✓ According to Idaho Statute 15-5-104 DELEGATION OF POWERS BY PARENT OR GUARDIAN, the biological or adoptive parent can delegate some or all their parental rights on a temporary basis to another party, such as the child’s grandparents through a properly executed power of attorney.
 - A parent or a guardian of a minor can delegate any of the parent’s or guardian’s powers regarding care, custody, or property of the minor. This includes powers for medical care and educational care of the minor or ward.
 - The delegation for a minor to a grandparent of the minor, (or to a sibling of the minor, or to a sibling of either parent of the minor) is effective until the time period, or date, or condition set forth in the power of attorney for automatic expiration of the power of attorney occurs.

- If the power of attorney does not provide a time period, or date, or condition for automatic expiration of the power, the power shall continue for a period of three years.
- The delegating parent or guardian may revoke the power of attorney at any time in writing delivered to the grandparent or sibling of the delegating parent or guardian.
- Power of Attorney forms do not need to be notarized, however should be verified with the parent if possible.

✓ *Note: See section **Topic: Other** for additional information on power of attorney.*

TOPIC: FOSTER PARENT

KEY POINTS

- ✓ In cases where the biological parent wants their child to receive ITP services, but does not want the foster parents involved, ITP must respect the parent's decision. If the biological parent does not want the foster parent to participate in ITP with the child, or for ITP to share information with the foster parent, ITP can only work with biological parent. In these instances, ITP must contact the CFS worker to inform them of the situation.
- ✓ Foster parents are not financially responsible for a foster child in their care. Even when a child is in the custody of DHW, the biological or adoptive parent is still financially responsible. Only the parent has the authority to sign ITP's financial resources form if their whereabouts are known, or their legal rights have not been terminated.
 - If the child is in the custody of DHW, ITP still holds the intake and IFSP meetings with the biological or adoptive parent. For ITP to be able to bill insurance the parent must sign (or parent can decline).
- ✓ A foster parent is not considered a person acting in the place of a parent with whom the child lives, and cannot automatically sign for screening, evaluation and or/ITP services in the event a parent is unwilling and/or is unavailable to sign.
- ✓ As just stated, Idaho state law prohibits a foster parent from acting as a parent. However, a foster parent can be assigned as a surrogate parent. In this instance, it is imperative for the ITP service coordinator to work with the CFS worker to identify the person best suited to be the child's surrogate parent. Follow the surrogate policy process to determine and assign a surrogate parent.
- ✓ A foster parent does not automatically assume the role of surrogate parent just because a child is in their care. In this instance, it is imperative for the ITP service coordinator to follow the surrogate parent policy process and to work with the CFS worker to identify the person best suited to be the child's surrogate parent.
- ✓ When there is an unsafe situation where it would not be in the best interest of the child or foster parent for the biological parent to know where they live, care must be taken when filling out the Consent for Release of Information form or releasing records. Use a generic labeling of "DHW Foster Parent" for any section of the form where the foster parent's name may be listed, and "CO PTC Building" for any section of the form where the address is listed.
 - It is imperative to check any records released to the parent that may include the foster parent's name or address, or other identifiable information on any reports (e.g., IFSP, evaluations, etc.). Check your region's redaction process.
 - It is also very important to enter any advisory information into ITPKIDS in the designated advisory tab, and to keep this information updated.

TOPIC: SURROGATE PARENT

KEY POINTS

- ✓ ITP should work to identify and assign a surrogate parent for the child if the biological or adoptive parent cannot be located after reasonable attempts. Reasonable attempts are defined as at least three documented attempts to contact the family. All attempts to contact the parent must be documented in a CSR. Refer to the ITP Case Closure Policy in the ITP eManual.
- ✓ Employees of the Infant Toddler Program, Child Welfare Program or any other public agency, or early intervention provider that delivers services to the child or the child's family may **NOT** be assigned as the Surrogate Parent. This includes situations in which parental rights have been terminated and the Department has been appointed guardianship.
- ✓ The surrogate parent assumes the same rights and responsibilities under ITP as a biological or adoptive parent, including signing all required documentation needing parent's signature for IDEA Part C. This can include, but is not limited to:
 - Consent forms for screening, evaluation, and early intervention services (as well as the ability to decline any service)
 - Individualized Family Service Plan (IFSP), including IFSP addendums
 - Consent prior to disclosure or use of personally identifiable information
 - Privacy forms
 - Mediation agreements; complaint resolution procedure documents
 - *Note: Insurance bills the biological or adoptive parents. Only the biological or adoptive parent signs the financial resources form, so in this case the financial resources form is not required. ITP does not bill a surrogate parent's insurance.*
- ✓ Idaho State law prohibits a foster parent from acting as a parent. However, a foster parent can be assigned as a surrogate parent. In this instance, it is imperative that the ITP service coordinator follow the Infant Toddler Surrogate Parent Policy and work with the CFS worker to identify the person best suited to be the child's surrogate parent.
 - *Note: A surrogate parent can also include a grandparent, step-parent, or other relative.*
- ✓ Under IDEA Part C, the surrogate parent is appointed by the Lead Agency (Infant Toddler Program).
- ✓ The person assigned as surrogate parent is the only legally authorized person to provide consent. The surrogate parent cannot have someone else sign in their place (such as a spouse). If the surrogate parent is not able to continue their appointment, ITP should assign a different surrogate parent.
- ✓ If a biological or adoptive parent whereabouts become known and they can be located, the surrogate parent assignment would need to be ended, and ITP would work with the child's biological or adoptive parent.
- ✓ If a surrogate parent assignment change occurs, ITP does not need to obtain new signatures on consents already signed and moving forward the newly assigned surrogate parent signs any new consent.
- ✓ If no surrogate parent can be identified the child's case would be closed.
- ✓ For additional information see: *The Infant Toddler Program (ITP) Surrogate Parent Training Questions and Answers:* <http://healthandwelfare.idaho.gov/Portals/0/Children/InfantToddlerProgram/SurrogateParent/SurrogateParentPolicy.pdf?ver=2016-06-07-145046-007>

TOPIC: LEGAL GUARDIAN

KEY POINTS

- ✓ If a judge or court has granted legal guardianship of a child to another individual other than the biological or adoptive parent through a court order (which includes making educational decisions), the legal guardian has final legal authority for that child. The parents' rights are effectively suspended.
 - According to the IDEA Part C regulations definition of a parent, if a judicial decree or order identifies a specific person or persons to act as the "parent" of a child or to make educational or early intervention decisions on behalf of the child, then that person or persons must be determined to be the "parent" for purposes of Part C of the Act, even if the biological or adoptive parent is in the picture and their parental rights have not been terminated.
- ✓ A guardian must provide legal documentation to ITP showing they are authorized to act as the child's parent, or authorized to make early intervention, educational, health or developmental decisions for the child.
- ✓ A legal guardian in Idaho is a court appointed guardian authorized by a court order. An affidavit, even if entitled "guardianship" is NOT enough under Idaho law to prove legal guardianship. Legal guardianship is evidenced by:
 - A court order date stamped by the court and signed by a judge appointing the guardian, and/or
 - Letters of Guardianship date stamped by the court and signed by a judge which proves that the guardianship exists and is legal
- ✓ The above documents are date stamped by the court and have a judge's signature. While both are issued by the court, showing the Letters of Guardianship should be enough to prove legal guardianship.
- ✓ The spouse of a legal guardian is not automatically authorized to act in the place of the legal guardian unless they have specific legal documentation showing they are also authorized to act as the child's parent. Therefore, ITP needs consent to share information with the spouse.

TOPIC: ACTING IN THE PLACE OF A BIOLOGICAL/ADOPTIVE PARENT

KEY POINTS

- ✓ Prior to determining the need to identify an individual to act in the place of a biological or adoptive parent, consider the following:
 - Is the parent or legal guardian able to be located?
 - Can either parent be identified to give consent (even if the grandparent/relative does not want to pursue consent from the parent or legal guardian)?
 - If the parent is able to be located, can legal guardianship or power of attorney (delegation of powers) be given by the parents to give consent to early intervention services?
 - Would this instance constitute a need for a surrogate parent assignment?
- ✓ It is required that the person "acting in the place of a parent" has signed documentation from the biological or adoptive parent or the legal guardian.
- ✓ The documentation that must be obtained & **verified** to show an individual can act in the place of the parent must include one of the following:

- Legal guardianship (court orders)
 - Power of Attorney (delegation of parental rights, notarized or verified)
 - Handwritten/typed documentation from the biological or adoptive parent (**must be notarized**).
- ✓ A Power of Attorney and any handwritten/typed documentation from the biological or adoptive parent MUST include: parent’s full legal name, full legal name of the child, child’s date of birth, full legal name of the relative or individual caring for the child that the parent is delegating parental powers to, the physical address of the relative or individual caring for the child that the parent is delegating parental powers to, and a statement that the individual is granted powers to consent to services/or decline services (specifically, only those powers granted under 34 CFR §303 – i.e., to consent to early intervention services and be involved in the development of the service plan are needed for ITP). If signed documentation from parent cannot be obtained, work with supervisor on how to proceed.
- *Note: A Power of Attorney form that states the individual is granted powers to consent to “medical/educational” services will suffice to grant powers for IDEA Part C purposes. However, a Power of Attorney form that does not include “educational” services (and only refers to “medical” services) will not suffice to grant powers to another individual to consent to IDEA Part C services. In this instance, the powers granted must include “educational” services.*
- ✓ Documentation of actions is key in these situations.
- Be specific – document how decisions were made in the child’s case. ITP must use **critical** thinking...and decisions must be made on a case-by-case basis.
 - Document attempts to obtain consent from parent of their wishes, why there is absence of legal documentation, or why the parents are not able to be contacted.
 - Where applicable, document efforts to verify parent/guardian signature and ensure a copy of the Power of Attorney form is attached to the child’s record in the electronic data system.
- ✓ *Note: See section **Topic: Other** for additional information on power of attorney.*

TOPIC: CHILD & FAMILY SERVICES (CFS)

KEY POINTS

- ✓ The Child Abuse Prevention and Treatment Act (CAPTA) requires CFS to refer a child to ITP when a substantiated case of abuse or neglect occurs with a child under the age of three. However, the Act does not require parents to participate in ITP once the referral is made.
- ✓ The ITP early intervention services are voluntary.
- ✓ When a biological parent involved with Child Protection is not interested in receiving EI services for their child, ITP must respect the parent’s decision and inform the CFS worker of their decision.
- ✓ If a family is court ordered to participate and the biological or adoptive parent refuses to provide consent to participate in ITP, ITP must inform the CFS worker.
- ✓ When two or more DHW programs have a common client, staff may share information on a “need to know” basis according to Department rules. CFS and ITP can share information about the child and family to enable other program staff to work effectively with the client. Information shared outside the Department will require a release of information form signed by the parent.

- ✓ When pursuing a signature from a biological or adoptive parent and timelines extend beyond the requirements due to having difficulty contacting parent, consider this a “family reason” when documenting attempts to contact. In these cases, keep the CFS worker in the loop and ask for assistance with the process if needed. Document your efforts regarding obtaining parent signatures in a CSR.

TOPIC: OTHER SITUATIONS

KEY POINTS

Power of Attorney Key Points

- ✓ According to Idaho Statute 15-5-104 DELEGATION OF POWERS BY PARENT OR GUARDIAN, the biological or adoptive parent can delegate some or all their parental rights on a temporary basis to another party through a properly executed power of attorney:
 - A parent or a guardian of a minor can delegate any of the parent’s or guardian’s powers regarding care, custody, or property of the minor. This includes powers for medical care and educational care of the minor or ward.
 - The delegation for a minor to another individual is effective for a period not exceeding six months, or in the case of military personnel serving beyond the territorial limits of the United States for a period not exceeding twelve months.
 - *Note: See section **Topic: Grandparent** for additional information on effective period for grandparent of the minor, sibling of the minor, or sibling of either parent of the minor.*
- ✓ A Power of Attorney form may or may not be notarized. If the form is notarized, then proceed with delegation of powers by parent/guardian. However, if the form is not notarized, the parent or guardian signature should be verified with the parent/guardian. In the instance that the Power of Attorney form is not notarized, and parent/guardian signature cannot be verified, work with your supervisor on how to proceed.
 - Where applicable document efforts to verify parent/guardian signature and ensure a copy of the Power of Attorney form is attached to the child’s record in the electronic data system.
- ✓ A Power of Attorney from the biological or adoptive parent MUST include: parent’s full legal name, full legal name of the child, child’s date of birth, full legal name of the relative or individual caring for the child that the parent is delegating parental powers to, the physical address of the relative or individual caring for the child that the parent is delegating parental powers to, and a statement that the individual is granted powers to consent to services/or decline services (specifically, only those powers granted under 34 CFR §303 – i.e., to consent to early intervention services and be involved in the development of the service plan are needed for ITP). If signed documentation from parent cannot be obtained, work with supervisor on how to proceed.
 - *Note: A Power of Attorney form that states the individual is granted powers to consent to “medical/educational” services will suffice to grant powers for IDEA Part C purposes. However, a Power of Attorney form that does not include “educational” services (and only refers to “medical” services) will not suffice to grant powers to another individual to consent to IDEA Part C services. In this instance, the powers granted must include “educational” services.*

Guardian ad Litem Key Points

- ✓ Court Appointed Special Advocates (CASA) workers are appointed in child protection cases as Guardians ad Litem (GALs). Guardians ad Litem are trained volunteers appointed by the court to advocate for the best interests of a child who has experienced abused or neglect. It is important to understand that a Guardian ad Litem does NOT have any legal rights to the child they are advocating for. Their role is to make recommendations to the court in a child protection case.
- ✓ The role of the Guardian ad Litem is found at Idaho Code 16-1633, and includes:
 - Gathering information about the child and reporting to the court,
 - Monitoring the child's circumstances to make sure that the court's orders are being followed and continue to be in the best interest of the child,
 - Filing a report with the court at least five days before an adjudicatory, six-month review, or permanency hearing, and
 - Including the child's express wishes regarding permanency in all reports filed after the adjudicatory hearing.
- ✓ When a copy of the court order appointing a Guardian ad Litem to a child is presented to ITP, the Guardian ad Litem shall be permitted to inspect and copy pertinent records necessary to the current proceeding related to the child or children listed in the court order.
 - Parental consent from a biological or adoptive parent is not needed for a Guardian ad Litem to inspect and copy ITP records, as long as the Guardian ad Litem produces a copy of the court order.
 - Ensure a copy of the court order is attached to the child's record in the electronic data system.
- ✓ The Guardian ad Litem is NOT authorized to act as the child's parent, or authorized to make early intervention, educational, health or developmental decisions for the child. A CASA worker should not be assigned as a legal guardian as it creates a conflict of interest with their required duties as an outside, neutral court appointed advocate. Additionally, a CASA worker should not be assigned as a surrogate parent for a child enrolled in the Infant Toddler Program.